

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

MURRAY WALTER PISONY,
Plaintiff,

v.

COMMANDO CONSTRUCTION, INC.,
Defendant.

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Civ. A. No. 6:17-cv-00055-RP-JCM

JURY DEMANDED

**PLAINTIFF MURRAY WALTER PISONY’S PRELIMINARY INFRINGEMENT
CONTENTIONS**

Plaintiff Murray Walter Pisony (“Plaintiff” or “Pisony”) hereby submits the following Preliminary Infringement Contentions as to Defendant Commando Construction, Inc. (“Defendant” or “CCI”) in accordance with the January 18, 2018 Scheduling Order entered by the Court. ECF No. 32.

I. Preliminary Statement

Plaintiff provides these preliminary infringement contentions, which contain the following information: an identification of each claim of the each patent in suit that is allegedly infringed by defendant; an identification of each accused apparatus, product, device, method, or act (“Accused Instrumentality”) of which the plaintiff is aware, and a chart identifying where and how each limitation of each asserted claim is found within each Accused Instrumentality. Scheduling Order, ECF No. 32. Because fact discovery has only recently commenced and Defendant has not yet provided Plaintiff with documents or other information including permitting inspection of the Accused Instrumentalities, Plaintiff reserves the right to supplement or alter his responses herein based on information produced by Defendant or material otherwise located and/or produced in the course of discovery in this case.

II. Each Claim of United States Patent No. 7,591,629 (the “’629 Patent”) that is Allegedly Infringed by Defendant

Based on available information obtained to date, Plaintiff claims that Defendant has infringed and is infringing, either literally and/or under the doctrine of equivalents at least claims 1, 2, 4, and 6 of the ’629 Patent (the “Asserted Claims”).

III. The Identity of Defendant’s Accused Instrumentalities of Which Plaintiff is Aware

In making these contentions, Plaintiff has not yet received any discovery from Defendant regarding the Accused Instrumentalities. Further, Defendant operates the Accused Instrumentalities on private property to which Plaintiff does not have free access. Plaintiff has requested inspection of any and all Accused Instrumentalities developed from 2004 to present, including but not limited to the ability to conduct a visual inspection, take measurements and photographs, and test the operation of the Accused Instrumentalities. As of the time of service of these preliminary contentions, Plaintiff has not yet been granted access to such inspections.

Based on available information obtained to date, Defendant’s Accused Instrumentalities of which Plaintiff is aware are skid hustler machines manufactured, used, leased, and/or distributed by CCI, including but not limited to the machines depicted in the images attached to the First Amended Complaint in Exhibit 3 and in the claim charts served herewith.

Plaintiff reserves the right to supplement or alter this response based on information produced and/or inspection permitted by Defendant or material otherwise located and/or produced in the course of discovery in this case.

IV. Chart Identifying Where and How Each Limitation of Each Asserted Claim is Found Within Each Accused Instrumentality

The claim charts attached as Exhibits 1 and 2 identify where and how each limitation of each asserted claim is found within each Accused Instrumentality.

V. Document Production

Plaintiff has already produced a copy of the certified file history for the '629 Patent at PISONY003229 and PISONY003230-003468. Plaintiff further states that the only non-U.S. patent related document of which he is aware that claims priority to the filing date of the '629 Patent is an Australian patent application produced at PISONY005465-005501. Plaintiff also filed a Canadian patent application produced at PISONY005502-005535. Plaintiff is unaware of any other non-U.S. patents or patent applications claiming a common priority with the '629 Patent.

VI. Priority Date

At this time, Plaintiff asserts that the '629 Patent is entitled to a priority date of August 1, 2004. Plaintiff has produced and is contemporaneously serving an additional production including documents evidencing the conception, reduction to practice, design, and development of each claimed invention which was created on or before the application date of the '629 Patent, including but not limited to Bates numbers PISONY000227-000238; PISONY000579-000580; PISONY000581-000582; PISONY000883-000920; PISONY001002; PISONY001004-001005; PISONY001835-001838; PISONY002770-002793; PISONY002866-002944; PISONY003101-003182; PISONY003183-003204; PISONY003980; PISONY005537-005855; PISONY005856-006176; PISONY006186-006206; PISONY006207-006220; PISONY006221-006304; PISONY006305-006378; PISONY006379-006545; and PISONY006596-006648.

DATED: March 8, 2018

Respectfully submitted,

WILSON LEGAL GROUP P.C.

By: /s/ John T. Wilson

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***Attorneys for Plaintiff, Murray Walter
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CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2018, a true and correct copy of the foregoing was served on all counsel of record via electronic mail.

/s/ John T. Wilson

John T. Wilson


**Exhibit 1 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629**

Claim 1 An apparatus for picking up, stacking and bundling lumber, comprising:	Commando Construction, Inc.'s Skid Hustler Machine – Missouri 2008 
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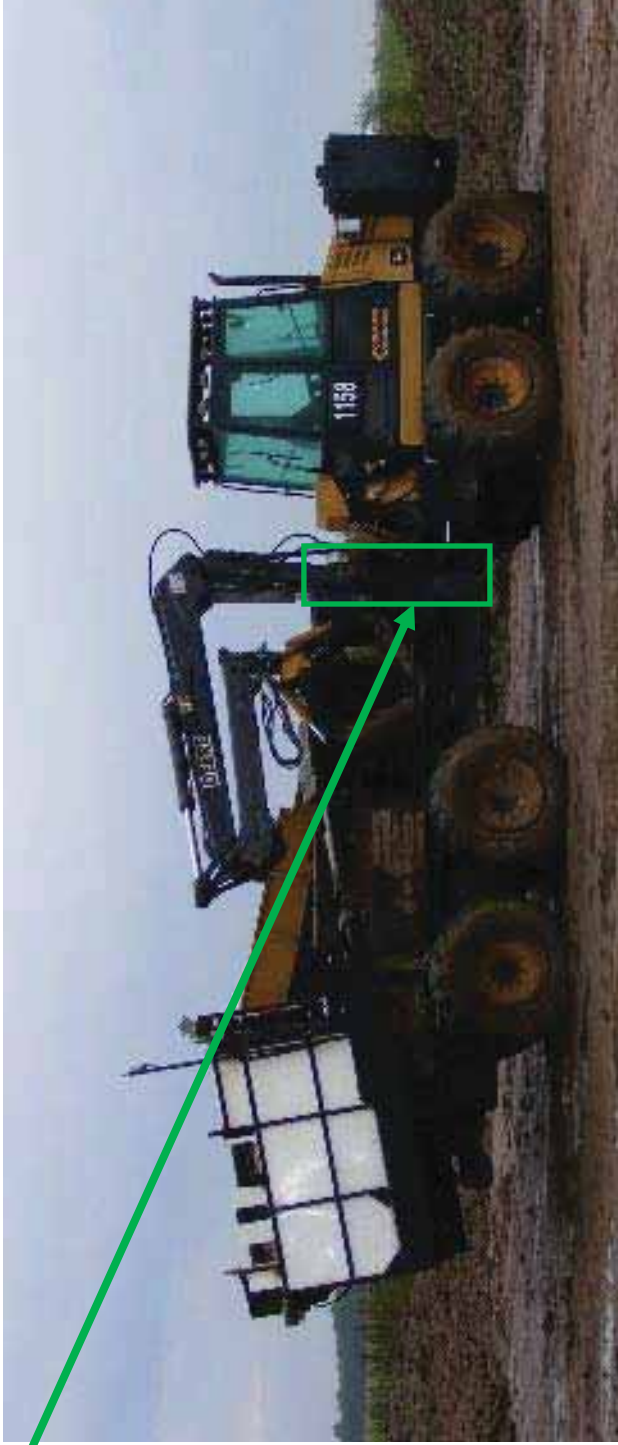
**Exhibit 1 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629**

Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Missouri 2008
(a) a chassis,	 A photograph of a yellow and black skid steer loader, identified as a Deere 1158, operating on a muddy construction site. The machine is shown from a side-rear perspective, with its rear-mounted loader bucket raised. A green arrow points from the text "(a) a chassis," in the adjacent column to the main frame of the machine. The machine features "DEERE" and "1158" branding, and a "COMMANDO CONSTRUCTION" logo is visible on the rear panel. The ground is wet and muddy, and the background shows a cloudy sky and some distant structures.

**Exhibit 1 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629**

Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Missouri 2008
(b) a grapple carried with the chassis,	

**Exhibit 1 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629**

Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Missouri 2008
(b) a grapple carried with the chassis,	 A photograph of a yellow skid steer loader, identified by the number 1158 on its side, equipped with a grapple attachment. The machine is parked on a dirt surface. A green arrow originates from the text '(b) a grapple carried with the chassis,' in the adjacent cell and points to a green rectangular box on the side of the machine's chassis, highlighting the location where the grapple is mounted.

**Exhibit 1 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629**


Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Missouri 2008
<p data-bbox="261 1696 402 1934">(c) a conveyor assembly supported on the chassis,</p>	

Exhibit 1 to Plaintiff’s Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629


Claim 1	Commando Construction, Inc.’s Skid Hustler Machine – Missouri 2008
<p>(d) a stacking assembly operatively connected adjacent the conveyor assembly, the stacking assembly including an unscrambling hopper,</p>	<p>The stacking assembly is operatively connected to the conveyor assembly as shown below in that both are connected via chassis such that the conveyor assembly is able to deposit the skids into the unscrambling bin, which is part of the stacking assembly.</p> 

Exhibit 1 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629



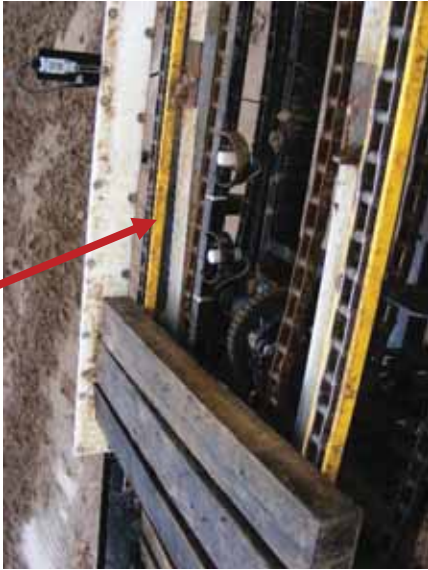
Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Missouri 2008
a row conveyor, a stacking bin and	  

Exhibit 1 to Plaintiff’s Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 1	Commando Construction, Inc.’s Skid Hustler Machine – Missouri 2008
a bundling assembly , and,	

Exhibit 1 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Missouri 2008
<p>(e) a discharge platform operatively connected adjacent the bundling assembly,</p>	

Exhibit 1 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Missouri 2008
<p>wherein the conveyor assembly includes a frame,</p>	

Exhibit 1 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629


Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Missouri 2008
<p>a pivotal connection for the frame to permit angular adjustment of the frame relative to the chassis,</p>	

Exhibit 1 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Missouri 2008
<p>an extendable mast connected between the frame and the chassis to drive the frame about the pivotal connection</p>	

Exhibit 1 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Missouri 2008
<p>and a receiving bin and a conveyor carried on the frame,</p>	

**Exhibit 1 to Plaintiff’s Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629**

Claim 1	Commando Construction, Inc.’s Skid Hustler Machine – Missouri 2008
	<div data-bbox="293 1486 326 1623">Conveyor</div> <div data-bbox="293 1031 326 1220">Receiving bin</div> 

Exhibit 1 to Plaintiff’s Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 1	Commando Construction, Inc.’s Skid Hustler Machine – Missouri 2008
<p>the conveyor positioned between the receiving bin and the stacking assembly and being operable to move lumber from the receiving bin to the stacking assembly</p>	

**Exhibit 1 to Plaintiff’s Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629**

Claim 1	Commando Construction, Inc.’s Skid Hustler Machine – Missouri 2008
<p>the conveyor positioned between the receiving bin and the stacking assembly and being operable to move lumber from the receiving bin to the stacking assembly</p>	

Exhibit 1 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

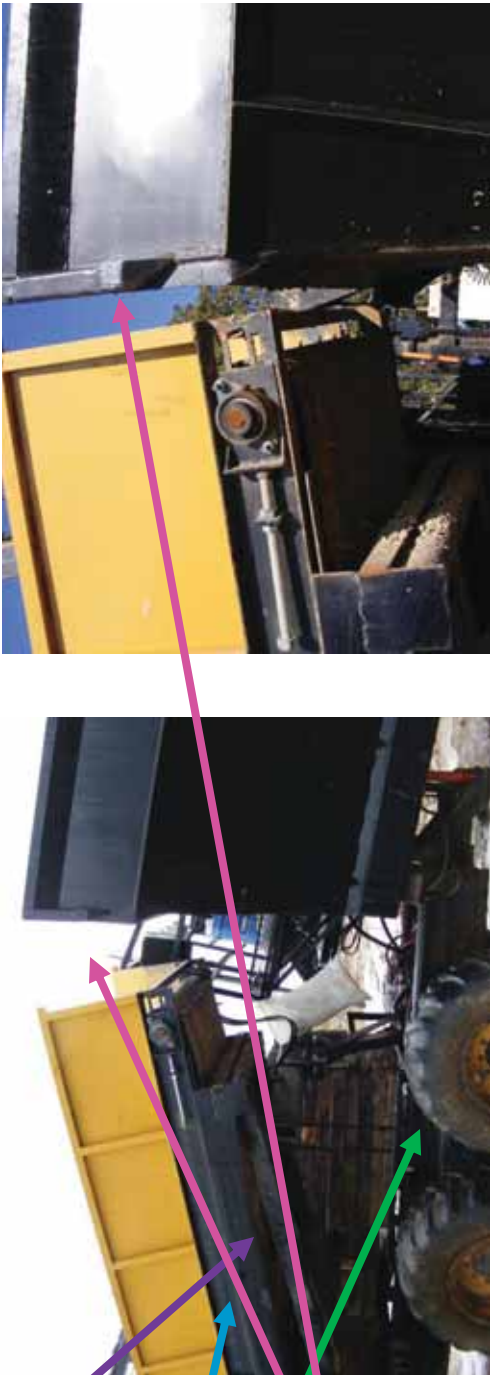

Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Missouri 2008
<p>and the mast being operable to drive adjustment of the angle of the frame relative to the chassis to select the approach angle for the conveyor relative to the stacking assembly.</p>	

Exhibit 1 to Plaintiff’s Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 2	Accused Instrumentalities – Skid Hustler Machine - Missouri 2008
<p>The apparatus of claim 1 wherein the mast drives the frame adjacent the receiving bin to select a spacing between the frame and the chassis.</p>	

**Exhibit 1 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629**

The apparatus of claim 1 wherein the mast drives the frame adjacent the **receiving bin** to select a spacing between the frame and the chassis



Exhibit 1 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

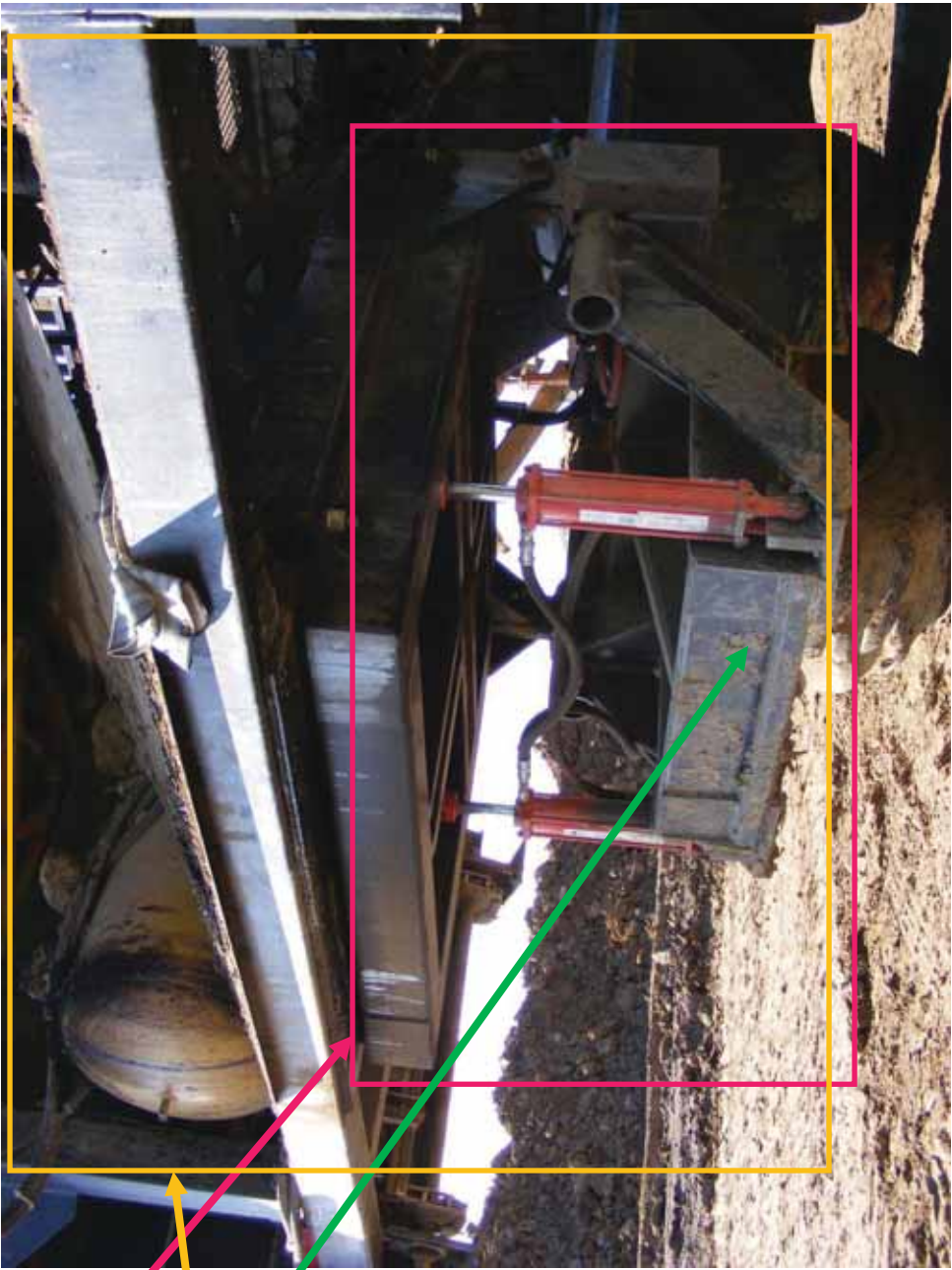

Claim 4	Accused Instrumentalities – Skid Hustler Machine – Missouri 2008
<p>The apparatus of claim 1 wherein the stacking assembly further includes a pivoting arrangement for tilting the stacking assembly relative to the chassis</p>	

Exhibit 1 to Plaintiff’s Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 4	Accused Instrumentalities – Skid Hustler Machine – Missouri 2008
<p>to provide for substantial leveling of the stacking assembly when operating on uneven ground surfaces.</p>	<p>The stacking assembly can be tilted and leveled using the pivoting arrangement shown above.</p> 

Exhibit 1 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 6	Accused Instrumentalities – Skid Hustler Machine – Missouri 2008
<p>The apparatus of claim 1 wherein the mast includes a hydraulic cylinder drivable to telescope to various lengths.</p>	

**Exhibit 2 to Plaintiff’s Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629**


Claim 1 An apparatus for picking up, stacking and bundling lumber, comprising:	<p>Commando Construction, Inc.’s Skid Hustler Machine – Iowa 2016</p> 
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Exhibit 2 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Iowa 2016
(a) a chassis,	

Exhibit 2 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629


Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Iowa 2016
<p>(b) a grapple carried with the chassis,</p>	

Exhibit 2 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Iowa 2016
<p>(c) a conveyor assembly supported on the chassis,</p>	

Exhibit 2 to Plaintiff’s Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 1	Commando Construction, Inc.’s Skid Hustler Machine – Iowa 2016
<p>(d) a stacking assembly operatively connected adjacent the conveyor assembly, the stacking assembly including an unscrambling hopper,</p>	<p>The stacking assembly is operatively connected to the conveyor assembly as shown below in that both are connected via chassis such that the conveyor assembly is able to deposit the skids into the unscrambling bin, which is part of the stacking assembly.</p> 

Exhibit 2 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Iowa 2016
(d) a stacking assembly operatively connected adjacent the conveyor assembly , the stacking assembly including an unscrambling hopper ,	<p data-bbox="253 163 365 1715">The stacking assembly is operatively connected to the conveyor assembly as shown below in that both are connected via chassis such that the conveyor assembly is able to deposit the skids into the unscrambling bin, which is part of the stacking assembly.</p> 

Exhibit 2 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629


Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Iowa 2016
<p>a row conveyor, a stacking bin and</p>	

Exhibit 2 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Iowa 2016
<p>a row conveyor, a stacking bin and</p>	

Exhibit 2 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Iowa 2016
<p>bundling assembly, and,</p>	

Exhibit 2 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Iowa 2016
<p>(e) a discharge platform operatively connected adjacent the bundling assembly,</p>	

Exhibit 2 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Iowa 2016
<p>wherein the conveyor assembly includes a frame,</p>	

Exhibit 2 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629


Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Iowa 2016
<p>a pivotal connection for the frame to permit angular adjustment of the frame relative to the chassis,</p>	

Exhibit 2 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Iowa 2016
<p data-bbox="261 1745 472 1950">an extendible mast connected between the frame and the chassis</p>	

Exhibit 2 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629


Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Iowa 2016
to drive the frame about the pivotal connection	

Exhibit 2 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Iowa 2016
<p>and a receiving bin and a conveyor carried on the frame,</p>	

Exhibit 2 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629


Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Iowa 2016
<p>and a receiving bin and a conveyor carried on the frame,</p>	

Exhibit 2 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 1	Commando Construction, Inc.'s Skid Hustler Machine – Iowa 2016
<p>the conveyor positioned between the receiving bin and the stacking assembly and being operable to move lumber from the receiving bin to the stacking assembly</p>	

Exhibit 2 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Commando Construction, Inc.'s Skid Hustler Machine – Iowa 2016	
<p>Claim 1</p> <p>and the mast</p> <p>being operable to drive adjustment of the angle of the frame relative to the chassis</p> <p>to select the approach angle for the conveyor relative to the stacking assembly.</p>	

Exhibit 2 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 2	Accused Instrumentalities – Skid Hustler Machine – Iowa 2016
<p>The apparatus of claim 1 wherein the mast drives the frame adjacent the receiving bin to select a spacing between the frame and the chassis.</p>	 <p>The photograph shows a yellow Deere skid steer loader. Four colored arrows point from text labels in the left column to specific parts of the machine's frame and chassis assembly:</p> <ul style="list-style-type: none">A purple arrow points from the word mast to the vertical support structure of the bucket.A blue arrow points from the word frame to the horizontal beam of the frame.An orange arrow points from the word receiving bin to the side panel of the frame.A pink arrow points from the word chassis to the lower structural member of the machine.

Exhibit 2 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 4	Accused Instrumentalities – Skid Hustler Machine – Iowa 2016
<p>The apparatus of claim 1 wherein the stacking assembly further includes a pivoting arrangement for tilting the stacking assembly relative to the chassis</p>	 <p>The photograph shows a skid steer loader with a large black metal structure (the stacking assembly) mounted on its chassis. The structure has a large horizontal plate with a "WARNING Stay 25' Back" label. The words "Skid Hustler" and "OMMANDO CONSTRUCTION" are visible on the machine. A red rectangular box highlights the lower portion of the machine, including the chassis and wheels. A green arrow points from the word "chassis" in the text to this red box. A red rectangular box highlights the pivot point where the stacking assembly meets the chassis. A red arrow points from the phrase "pivoting arrangement" in the text to this red box. A yellow rectangular box highlights the entire stacking assembly. A green arrow points from the word "stacking assembly" in the text to this yellow box.</p>

Exhibit 2 to Plaintiff’s Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 4	Accused Instrumentalities – Skid Hustler Machine – Iowa 2016
<p>to provide for substantial leveling of the stacking assembly when operating on uneven ground surfaces.</p>	<p>The stacking assembly can be tilted and leveled using the pivoting arrangement shown above.</p> 

Exhibit 2 to Plaintiff's Disclosure of Asserted Claims and Preliminary Infringement Contentions for
United States Patent No. 7,591,629

Claim 6	Accused Instrumentalities – Skid Hustler Machine – Iowa 2016
<p>The apparatus of claim 1 wherein the mast includes a hydraulic cylinder drivable to telescope to various lengths.</p>	